

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CHRISTOPHER PAGAN, on behalf of himself  
And all others similarly situated,

Plaintiff,

-against-

LUCCELLO, INC., d/b/a/ Itshot.com.,  
Defendant.  
-----X

Docket No.:  
24-CV-104(VSB)

**PLAINTIFF’S MOTION  
FOR A DEFAULT  
JUDGMENT AGAINST  
DEFENDANT LUCCELLO**

**PRELIMINARY STATEMENT**

On, January 5, 2024, Plaintiff (“Pagan” or “Plaintiff”), acting on behalf of himself, and all others similarly situated, filed a Complaint against Defendant Luccello, Inc., d/b/a/ Itshot.com (“Luccello, Inc.” or “Defendant”) (Docket No. 1, Ex. A) Thereafter, on January 23, 2024, Plaintiff served Defendant with a summons and a copy of the Complaint and filed the Affidavit of Service with the Court on February 13, 2024 (Docket No. 6, Ex. B). Under the Federal Rules of Civil Procedure, Defendant was required to Answer or otherwise move by February 13, 2024. However, Defendant has since failed to answer, or otherwise defend the claims against him, under the deadlines established by the Federal Rules of Civil Procedure.

Pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1, on March 5, 2024, Plaintiff made an application to the Clerk of the Court for a Certificate of Default, which was issued that same day (Docket No. 14, Ex. C). Plaintiff has satisfied the requirements of the relevant Civil and Local Rules regarding default judgment, and as such, Plaintiff now respectfully requests this Court to enter a default judgment against Defendant Luccello, Inc.

**STATEMENT OF FACTS**

Plaintiff, Christopher Pagan, a resident of Bronx County, New York, is a visually impaired handicapped person and a member of the protected class of individuals under the ADA, pursuant to

42 U.S.C. §§ 12102(1)-(2), and the regulations implementing the ADA, as set forth in 28 CFR §§ 36.101 et seq., and NYCHRL. Plaintiff is unable to utilize a computer or device without the assistance of screen reading software, such as the Nonvisual Desktop Access or “NVDA”

Plaintiff filed the underlying civil action against Defendant for its failure to design, construct and maintain their Website, <https://www.itshot.com> (the “Website” or “Defendant’s Website”), to be fully accessible to and independently usable to Plaintiff and other blind or visually impaired individuals. Defendant’s denial of full and equal access to the Website, and therefore, the denial of the goods and services offered thereby, is a violation of Plaintiff’s rights under the Americans with Disabilities Act (“ADA”).

### **ARGUMENT**

#### **I. THE COURT SHOULD GRANT A DEFAULT JUDGMENT AGAINST DEFENDANT**

##### **A. The Defaulting Defendant Was Properly Served but Failed to Answer or Otherwise Defend the Allegations in the Complaint.**

Plaintiff filed the Complaint in this action on January 5, 2024, asserting affirmative claims for relief against the Defendant Luccello, Inc., d/b/a Itshot.com (Complaint, Docket No. 1, Ex. A). In accordance with Fed. R. Civ. P. 4, Plaintiff properly served a copy of the Complaint and a summons on Defendant on January 23, 2024, and subsequently filed proof of service with the Court on February 13, 2024. (Docket No. 6, Ex. B). The date of service on the Defendant, and the date that Defendant’s answer was due, is set forth below:

	<b>Date Served:</b>	<b>Date Answer Due:</b>	<b>Proof of Service Filed at Docket No.:</b>
Defendant Luccello, Inc.	January 23, 2024	February 13, 2024	Doc. No. 6

It is undisputed that Defendant was served with the subject complaint. This is confirmed by the fact that on February 15, 2024, Defendant’s owner, Denis Stepansky, contacted Plaintiff’s law

firm and demanded that Plaintiff voluntarily dismiss the subject lawsuit. Despite being served with a copy of the complaint, Defendant has failed to file an answer or otherwise appear in this action.

Thereafter, on March 5, 2020, pursuant to Local Civil Rule 55.1 and Fed. R. Civ. P. 55(a), Plaintiff filed an application to the Clerk of the Court for a Certificate of Default against Defendant Luccello. (Docket No. 12). The same day, the Clerk of the Court entered a Certificate of Default against him. (Docket No. 14, Ex. C).

It is clear that Defendant Luccello Inc. has no intention of defending itself in this action. Accordingly, Plaintiff is now entitled to default judgment against Defendant pursuant to Fed. R. Civ. P. 55 and Local Civil Rule 55.2, on the issue of liability.<sup>1</sup>

### **CONCLUSION**

For all of the foregoing reasons, pursuant to Fed. R. Civ. P. 55 and Local Civil Rule 55.2, Plaintiff is entitled to a default judgment against Defendant. Plaintiff properly served Defendant Luccello, Inc., but despite the time limits under the Federal Rules of Civil Procedure, Defendant has never answered or otherwise appeared in this action. Accordingly, Plaintiff respectfully requests that this Court grant his motion and enter a default judgment against Defendant Luccello, Inc. on the issue of liability.

Dated: New York, New York  
March 6, 2024

Respectfully Submitted,

**JON L. NORINSBERG, ESQ., PLLC**

  
\_\_\_\_\_  
Jon L. Norinsberg, Esq.  
*Attorney for Plaintiff*

---

<sup>1</sup> At this time, Plaintiff only moves for a default judgment on the issue of liability. With respect to damages, Plaintiff requests that this matter be set down for an inquest, either at the time of trial or at any other time that this Court deems appropriate.

110 East 59<sup>th</sup> Street, Suite 3200  
New York, New York 10022  
Telephone No.: (212) 791-5396  
Facsimile No.: (212) 406-6890  
[jon@norinsberglaw.com](mailto:jon@norinsberglaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I further certify that a copy of the foregoing was served, via certified mail and regular U.S. Mail, on March 6, 2024, upon the Defendant at the following address:

Luccello, Inc, d/b/a Itshot.com  
C/O Denis Stepansky  
10 West 47<sup>th</sup> Street  
New York, N.Y. 10036

---

Jon L. Norinsberg, Esq.